

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)

_____	)
In re:	) Chapter 11
	)
CIRCUIT CITY STORES, INC., et al.	) Case No. 08-35653-KRH
	)
Debtor,	) Jointly Administered
_____	)

**412 SOUTH BROADWAY REALTY LLC'S RESPONSE TO DEBTORS'  
FORTY-SECOND OBJECTION TO PROOFS OF CLAIM**

Now comes 412 South Broadway Realty LLC ("412 South"), by and through its undersigned counsel, as assignee of Circuit NH Corp. ("Circuit NH"), and files this Response to Debtors' Forty-Second Omnibus Objection to Claims (Disallowance of Certain Amended Claims) [Docket No. 5015].

**A. BACKGROUND**

1. On November 10, 2008 (the "Petition Date"), Circuit City Stores, Inc. and affiliated debtors (the "Debtors") filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code.
2. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

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3. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC (“KCC”) as claims, noticing, and balloting agent for the Debtors in these chapter 11 cases.
4. On November 12, 2008, this Court entered a certain Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims Under Bankruptcy Code Sections 105 and 503(b)(9) and Approving Form, Manner, and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 [Docket No. 107].
5. On January 21, 2009, Circuit Investors #5- Salem Limited Partnership (“Circuit Investors”) timely filed a Proof of Claim in the amount of \$11,866.66 and an unliquidated claim for all obligations arising under commercial lease. KCC docketed this claim as No. 5020.
6. On April 21, 2009, Circuit Investors filed an amended Proof of Claim in the amount of \$604,013.32, which added rejection damages and unpaid post-petition rent to its prior claim. This claim was docketed by KCC as No. 12282. See Exhibit A.
7. On or around June 2009, 412 South obtained a deed in lieu of foreclosure on the leased premises. Circuit NH held title to the premises, which it had obtained from Circuit Investors in 1995. As part of the transaction, Circuit NH agreed to assign its Proofs of Claim to 412 South. It was at this time that the parties became aware that Claim Nos. 5020 and 12282 had been filed in the name of the wrong entity. See Declaration of Jo-Ann Marzullo attached hereto as Exhibit B; Email from Jo-Ann Marzullo, Esq. to Richard Corbi, Esq. dated June 10, 2009 attached to Marzullo Decl. as Attachment 1 to Exhibit B (“Please advise me why the claim was filed in the name of Circuit Investors #5-Salem Limited Partnership which we understood sold the property in 1995 to Circuit

NH Corp.?"); email from Richard Corbi, Esq. to Jo-Ann Marzullo, Esq. dated June 11, 2009 attached to Marzullo Decl. as Attachment 1 to Exhibit B. ("The name is incorrect on the proof of claim form. We are filing an amended proof of claim.").

8. On June 16, 2009, Circuit NH filed an amended Proof of Claim, which substituted Circuit NH as the claimant. This proof of claim was docketed by KCC as No. 13397. See Exhibit C.
9. Sigmund Sommer Properties filed all of the Proofs of Claims on behalf of Circuit Investors and Circuit NH.
10. On August 5, 2009, Circuit NH assigned its Proofs of Claim to 412 South. See Exhibit D.
11. On October 23, 2009, 412 South filed its Notice of Transfer with the Court.

#### **B. DEBTORS' OMNIBUS OBJECTION**

12. On September 21, 2009, the Debtors filed their Forty-Second Omnibus Objection to Claims (Disallowance of Certain Amended Claims) [Docket No. 5015]. They object to Claim No. 12282 on the grounds that it was amended and replaced by Claim No. 13397. The objection also recharacterizes \$143,586.66, which represents unpaid post-petition rent, from an administrative claim to a priority claim.

#### **C. 412 SOUTH'S RESPONSE TO DEBTORS' OBJECTION**

13. 412 South opposes the Debtors' objection to Claim No. 12282 to the extent that the Debtors intend to use disallowance of the claim as a springboard to arguing that Claim No. 13397 was not timely filed.

14. By this Response, 412 South requests that the Debtors recognize and acknowledge that the Claim No. 13397 is timely filed (as it simply amends a prior timely filed claim) and that the Debtors will not object to Claim No. 13397 on those grounds.

15. 412 South does not oppose the recharacterization of the post petition rent claim, as that claim is being withdrawn pursuant to 412 South's Request for Allowance of Chapter 11 Amended Administrative Expense Claim and Amended General Unsecured Claim, filed with this court on October 27, 2009.

Dated: October 27, 2009

**412 SOUTH BROADWAY REALTY LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of October, 2009, I caused a copy of the foregoing to be served via electronic means to the parties on the Court's CM/ECF system.

/s/ Augustus C. Epps, Jr.  
Augustus C. Epps, Jr.

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